Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1996

LUIS ROSADO
Petitioner

v.

JEFFREY MERRILL, ET AL.
Respondents

Petition for Writ of Certiorari
to The United States Court of Appeals
For the First Circuit

PETITION FOR WRIT OF CERTIORARI

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12 pp

QUESTION PRESENTED

Luis Rosado filed a Petition for Habeus Corpus in the United States District Court for the District of Maine. Rosado therein alleged his bind-over for trial as an adult by the State of Maine violated the United States Constitution's guarantee of Due Process because the decision was not based upon clear and convincing evidence. The Petition was denied by the United States District Court.

Rosado appealed that decision to the United States Court of Appeals for the First Circuit, which Court denied Rosado's appeal. The question presented here is:

May a 15 year old boy be stripped of his protected status as a juvenile in a transfer or bind-over proceeding initiated by the government where the burden of proof in such proceeding is a mere preponderance of evidence?

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PETITION FOR WRIT OF CERTIORARI

Luis Rosado respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered in this proceeding on March 26, 1997, in order to resolve the important issue presented herein.

OPINION BELOW

The opinion of the United States Court of Appeals for the First Circuit that gives rise to this Petition is a decision dated March 26, 1997. It is re-printed in the Appendix, attached herein. By that decision, the Court denied Petitioner's appeal of the United States District Court's denial of a Writ of Habeus Corpus.

JURISDICTION

Luis Rosado filed a Petition for Writ of Habeus Corpus on March 12, 1996. On September 6, 1996 the United States Magistrate recommended a denial of Rosado's Petition. The United States District Court affirmed by Order the Magistrate's recommended decision on October 11, 1996. Petitioner timely appealed to the United States Court of Appeals for the First Circuit on October 31, 1996.

The United States Court of Appeals denied Rosado's appeal on March 26, 1997. Pursuant to Supreme Court Rule 13.1, this Petition for Writ of Certiorari has been filed within 90 days of the First Circuit's opinion. The jurisdiction of the Court is invoked pursuant to 28 U.S.C. Section 1254(1).

STATUTES INVOLVED IN CASE

Maine Revised Statute Annotated, Title 15, Section 3101, as amended, provides:

> E. The Juvenile Court shall bind a juvenile over to the Superior Court if it finds:
> (1) That there is probable cause to believe that a juvenile crime has been committed that would constitute murder or a Class A, Class B or Class C crime if the juvenile involved were an adult and that the juvenile to be bound over committed it; and
> (2) By a preponderance of the evidence that, after a consideration of the seriousness of the crime, the characteristics of the juvenile and the dispositional alternatives available to the Juvenile Court, as specified in paragraph D, it is appropriate to prosecute the juvenile as if he were an adult.

The United States Constitution, Fourteenth Amendment, provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Luis Rosado, age 15 at the time of his arrest, was bound-over for trial as an adult on the charge of manslaughter. The Maine Juvenile Court found, upon a mere preponderance of evidence, pursuant to 15 M.R.S.A. Section 3101(E), that it was "appropriate" to terminate Rosado's juvenile status and bind him over for trial as an adult. Rosado appealed this decision through the Maine Supreme Judicial Court. That Court denied Rosado's appeal of the

Juvenile Court's bind-over order on January 2, 1996.

Luis Rosado thereafter timely petitioned for Writ of Habeus Corpus to the United States District Court contending therein that his bind-over for trial as an adult violated Due Process because the termination of his juvenile status could not occur except upon clear and convincing evidence. The United States District Court denied Luis Rosado's Petition because it concluded that Maine's "preponderance of evidence" standard as found in 15 M.R.S.A. Section 3101(E) satisfied the U.S. Constitution's requirement of Due Process, citing Santosky v. Kramer, 455 U.S. 745 (1982).

On appeal, the United States Court of Appeals for the First Circuit agreed that the burden of proof upon the government in a bind-over or transfer proceeding may be the mere preponderance of evidence standard, rejecting Rosado's argument that Due Process required the higher clear and convincing standard of proof. The Court, citing a comparable federal statute - 18 U.S.C. Section 5032, the Juvenile Justice and Delinquency Prevention Act, noted that three other circuits had rejected the argument that termination of juvenile status can only occur upon clear and convincing evidence, citing United States v. I.D.P., 102 F. 3rd 507 (11th Cir. 1996); United States v. T.F.F., 55 F.3rd 1118 (6th Cir. 1995); United States v. Doe, 49 F.3rd 859 (2nd Cir. 1995).

REASONS FOR GRANTING THE WRIT

I. It is violation of Due Process to bind-over for trial as an adult a 15 year old boy except upon clear and convincing evidence.

In Kent v. United States, 383 U.S. 541 (1966) the Supreme Court held that juvenile bind-overs or transfers are "critical" proceedings that determine"vital" rights of juveniles. Kent at 556;560. The Kent decision, however, left open the question of what standard of proof should be required of the government in

such bind-over or transfer proceedings.

Several recent decisions, however, have held that where "government initiated proceedings" threaten an individual "with a significant deprivation of liberty or stigma" or where "particularly important" interests are at stake, then in such government initiated proceedings Due Process requires clear and convincing evidence as the standard of proof. Santosky v. Kramer, 455 U.S. 745 (1982). See also Addington v. Texas, 441 U.S. 418 (1979).

The open question is whether a juvenile bind-over or transfer is one such government initiated proceeding where the burden of proof must be clear and convincing evidence. Four (4) circuit courts interpreting the Juvenile Justice and Delinquency Prevention Act, 18 U.S.C. Section 5032, have ruled that Due Process does not require the clear and convincing burden of proof in a juvenile transfer or bind-over proceeding. See United States v. I.D.P., 102 F.3rd 507 (11th Cir. 1996); United States v. T.F.F., 55 F.3rd 1118 (6th Cir. 1995); United States v. Doe, 49 F.3rd 859 (2nd Cir. 1995); and U.S. v. Parker, 956 F.2d 169 (8th Cir. 1992).

However, at least one United States District Court has ruled otherwise. See U.S. v. M.L., 811 F.Supp. 491 (D.C. Cal. 1992) and note U.S. v. Juvenile Male #1, 86 F.3rd 1314, 1322-23 (4th Cir. 1996) (stating "there is, however, no consensus among the Court of Appeals on the burden of proof at the transfer hearing.").

The states, including Maine, all have statutes with some similarity to the federal law found in 18 U.S.C. Section 5032, which provisions are themselves historical descendants of dicta from the Kent v. United States opinion. Some states require clear and convincing evidence. For example, State ex rel. Clatterback, 700 P.2d 1076, 1079 (Utah 1985) ("We agree that whether a juvenile is to be transferred to the adult system is a critically important question...."); Ex Parte J.R., 582 So.2d 444, 446-47 (Ala.1991) (Citing Kent as authority that transfers 'determine vitally important statutory rights of juveniles'); Matter of Seven Juveniles, 664 P.2d 947, 949-50 (Nev. 1983) (Citing Kent as

persuasive authority). Others, including Maine, do not require the higher measure of proof, but are satisfied that the mere preponderance standard passes Due Process muster.

As Congress considers toughening juvenile justice laws, it is timely to consider and resolve the open question of what burden of proof must be met by the government, both state and federal, before a 15 year old boy is tossed into the hurly-burly of our adult criminal justice system; before other children are irrevocably stripped of their protected status on juveniles.

CONCLUSION

For the foregoing reasons, Petitioner prays the Court grant this request for Writ of Certiorari.

Dated at Saco, Maine this 16th day of June, 1997.

Timothy S. Murphy
Attorney for Petitioner

APPENDIX

UNITED STATES COURT OF APPEALS
For the First Circuit

No. 96-2310

LUIS ROSADO,
Appellant,

v.

CORRECTIONS, ME WARDEN, ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE
[Hon.Gene Carter, U.S. District Judge]

Before

Torruella, Chief Judge,
Campbell, Senior Circuit Judge,
and Boudin, Circuit Judge.

Timothy S. Murphy and Gardner Gardner & Murphy on brief for appellant.
Andrew Ketterer, Attorney General, Mary M. Sauer and Charles K. Leadbetter, Assistant Attorneys General, on brief for appellees.

March 26, 1997

Per Curiam. Petitioner Luis Rosado has filed an application for a writ of habeus corpus under 28 U.S.C. Section 2254. In it, he argues that the Maine statute setting forth the circumstances under which a juvenile may be prosecuted as an adult, see 15 M.R.S.A. Section 3101(4), violates due process because it directs the juvenile court to use a preponderance of the evidence standard in determining when such prosecution is required; Rosado maintains that the Constitution mandates a standard of clear and convincing evidence. The District Court denied the application for the writ on the merits, but granted a certificate of probable cause to appeal.

We treat this certificate as a recommendation that we issue a certificate of appealability ("CAP") under 28 U.S.C. Section 2253, as amended by the Antiterrorism and Effective Death Penalty Act of 1996. See 28 U.S.C. Section 2253(c)(1)(B). We agree that a substantial question is presented and therefore grant Rosado's request for a CAP. However, since we believe that oral argument would not be of significant assistance – the parties have fully briefed the case and the issue turns on parsing Supreme Court precedents – we proceed directly to the merits.

Three circuit courts of appeal have addressed the same question in relation to the federal transfer provision contained in the Juvenile Justice and Delinquency Prevention Act. See 18 U.S.C. Section 5032. These courts hold that a preponderance of the evidence standard is all that due process requires. See United States v. I.D.P., 102 F.3d 507, 513-14 (11th Cir. 1996); United States v. T.F.F., 55 F.3d 1118, 1122 (6th Cir. 1995); United States v. Doe, 49 F.3d 859, 868 (2d Cir. 1995). We agree with the result reached by these courts. Because the cases adequately set out the relevant analysis, including reference to the pertinent Supreme Court cases, we see no reason to repeat it here, but we believe that a published opinion by this court may be useful to district courts in this circuit.

Finally, Rosado cites a number of state cases in support of his position that due process requires a clear and convincing evidence

standard. Examination reveals that the courts in these cases either adopted such a standard by court rule or by reference to a state statute so providing; the courts that did consider due process claims did not decide what minimum standard of proof was required.

The judgment of the district court is affirmed.